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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,
Plaintiff,

vs.

Martel Alvarez-Chavez,
Defendant.

CR-92-00113-001-PHX-NVW

**UNITED STATES' RESPONSE TO
DEFENDANT'S MOTION FOR
COMPASSIONATE RELEASE**

I. Introduction

Defendant Martel Alvarez-Chavez's motion for compassionate release is premature because he does not yet meet any of the objective requirements under 18 U.S.C. § 3582(c)(1)(A)(i), nor are there any "other" extraordinary or compelling reasons to justify his release. Mr. Alvarez-Chavez is correct that the First Step Act now allows him to petition the Court directly under 18 U.S.C. § 3582(c)(1)(A), and that he has appropriately done so. But the basis for his motion—that when combined with his advanced age and length of incarceration, the policy changes enacted by the First Step Act constitute an extraordinary and compelling reason—does not comport with Section 3582(c)(1)(A)'s clear requirements. Accordingly, the motion should be denied.

II. Background

Mr. Alvarez-Chavez's procedural background is extensive and has been explained

1 in full on several prior occasions. *See* Doc. 325, 363, 404. In short, nearly thirty years
 2 ago, Mr. Alvarez-Chavez was convicted of violating 21 U.S.C. §§ 841(a)(1) and 846.
 3 Because he had two prior felony drug offense convictions, the Court sentenced him to a
 4 term of life imprisonment on March 8, 1993. *See* Doc. 149; Doc. 388 at 2-3. Since then,
 5 Defendant has filed numerous challenges, appeals, and other motions, but none have been
 6 successful. Defendant now moves the Court for compassionate release under 18 U.S.C. §
 7 3582(c)(1)(A)(i).

8 **III. There are not yet any extraordinary or compelling reasons to justify Mr.**
 9 **Alvarez-Chavez’s release under 18 U.S.C. § 3582(c)(1)(A)(i).**

10 Mr. Alvarez-Chavez’s request for compassionate release is not supported by his age
 11 (sixty-two), his length of time in prison (twenty-seven years), or any other First Step Act
 12 (“FSA”) policy changes. To be sure, the FSA made it easier for inmates to petition district
 13 courts for compassionate release pursuant to 18 U.S.C. § 3582. Previously, only the
 14 Director of the Bureau of Prisons (“BOP”) could file a motion for compassionate release,
 15 whereas an inmate may now do so after first exhausting his administrative rights with the
 16 BOP. *United States v. Johns*, CR 91-392-TUC-CKJ, 2019 WL 2646663, at *1–2 (D. Ariz.
 17 June 27, 2019); *United States v. Bunnell*, CR1400119001PHXDGC, 2019 WL 6114599, at
 18 *1 (D. Ariz. Nov. 18, 2019). The government agrees that Mr. Alvarez-Chavez has
 19 exhausted his administrative rights.

20 Thus, the statute permits the Court to modify Mr. Alvarez-Chavez’s sentence if it
 21 finds that “extraordinary and compelling reasons warrant such a reduction.” *See* 18 U.S.C.
 22 § 3582(c)(1)(A)(i).¹ These “extraordinary and compelling reasons” are defined by the
 23 commentary to U.S.S.G. § 1B1.13. *See* U.S.S.G. § 1B1.13, cmt. n. 1; *United States v.*
 24 *Brown*, 411 F. Supp. 3d 446, 448–49 (S.D. Iowa 2019); *United States v. Johns*, CR 91-
 25 392-TUC-CKJ, 2019 WL 2646663, at *1 (D. Ariz. June 27, 2019). That commentary

26
 27 ¹ The Court may also grant compassionate release under 18 U.S.C. §
 28 3582(c)(1)(A)(ii), but Mr. Alvarez-Chavez does not request relief under that sub-section,
 admitting that it is “not applicable here.” Doc. 423 at 2.

1 currently provides four circumstances in which “extraordinary and compelling reasons”
 2 exist: (1) the defendant’s medical condition; (2) the defendant’s age; (3) the defendant’s
 3 family circumstances; and (4) “other reasons” as determined by the Director of the Bureau
 4 of Prisons. U.S.S.G. § 1B1.13, n.1.

5 Because he does not qualify under the medical condition,² age,³ or family
 6 circumstances categories,⁴ Mr. Alvarez-Chavez relies on the catch-all “other reasons”
 7 provision. That provision, however, is currently left to the BOP Director’s sole discretion:
 8 “As determined by the Director of the Bureau of Prisons, there exists in the defendant’s
 9 case an extraordinary and compelling reason other than, or in combination with, the reasons
 10 described in subdivisions (A) through (C).” USSG § 1B1.13 cmt. n. 1. In this case, the
 11 Director has already found that “other reasons” do not exist; thus, Mr. Alvarez-Chavez’s
 12 motion fails in the first instance. *See* Doc. 423, Exs. C, D, F.

13 Nevertheless, because U.S.S.G. § 1B1.13 and its supporting commentary have not
 14 been updated since the FSA was enacted, Mr. Alvarez-Chavez argues that the Court is free
 15 to find that “other” extraordinary and compelling reasons exist without relying on the
 16 Director’s determination. This position is supported by at least a few district courts, but
 17 has not been examined by any Arizona or Ninth Circuit cases. *See Brown*, 411 F. Supp.
 18 3d 446, 449–50 (S.D. Iowa 2019) (Examining the “growing number of district courts” that
 19 have concluded that district courts are free to “determine whether any extraordinary and
 20 compelling reasons other than those delineated in U.S.S.G. § 1B1.13 cmt. n.1(A)–(C)
 21 warrant granting relief.”) (citing *United States v. Cantu*, No. 1:05-CR-458-1, 2019 WL
 22 2498923, at *5 (S.D. Tex. June 17, 2019); *United States v. Beck*, No. 1:13-CR-186-6, 2019

24 ² While Defendant’s health is deteriorating due to his advanced age, neither he nor
 25 the BOP have claimed that it has “substantially diminishe[d]” his ability to “provide self-
 26 care within the environment of a correctional facility,” as required by 1B1.13(A)(ii). *See*
 Doc. 423 at Ex. C.

27 ³ Defendant is not “at least 65 years old,” and so fails to meet the age requirement.

28 ⁴ Defendant has not based his request for relief on any family-based circumstances.

1 WL 2716505, at *5 (M.D.N.C. June 28, 2019).

2 Whatever else may be said about the Court’s discretion, the motion fails on the
3 merits. Beyond his advancing age and the length of time he has spent in prison—which is
4 no different than any other similarly situated defendant—Mr. Alvarez-Chavez points only
5 to the FSA’s broader policy implications as an “extraordinary and compelling reason.”
6 Doc. 423 at 3-4. And while the intent of the FSA was to “increas[e] the use and
7 transparency of compassionate release,” it does not support plenary resentencing for every
8 elderly inmate who was sentenced to a term of life imprisonment. *Compare* Pub. L. No.
9 115-391, 132 Stat. 5194, at *5239; *with United States v. Askins*, CR0200645001PHXSRB,
10 2019 WL 3800227, at *6 (D. Ariz. Aug. 6, 2019) (“The First Step Act includes no express
11 provision for plenary resentencing.”).

12 Even in *Cantu-Rivera*, where the court recognized that the FSA’s policy changes
13 were “a factor” among several others, the defendant also met several U.S.S.G § 1B1.13
14 factors. Unlike Mr. Alvarez-Chavez, the defendant “met the age-related definition of
15 extraordinary and compelling reasons” because he was “69 years old, [was] experiencing
16 serious deterioration in physical health . . . and he ha[d] served 30 years in prison.” *United*
17 *States v. Cantu-Rivera*, CR H-89-204, 2019 WL 2578272, at *2 (S.D. Tex. June 24, 2019).
18 Beyond his age, the defendant also met the “other reasons” category because of his
19 “extraordinary degree of rehabilitation,” which included “over 4,000 hours of teaching
20 while in federal prison to complete a Teaching Aide apprenticeship with the Department
21 of Labor.” *Id.* He also served as a “teaching assistant in several prison facilities for high-
22 school equivalency and English-as-a-Second-Language programs,” as well as “helping to
23 care for inmates placed in solitary confinement due to suicide attempts.” *Id.*

24 Mr. Alvarez-Chavez is certainly to be commended for his record of good behavior,
25 but as he admits, it does not rise to the level of *Cantu-Rivera*—and even if it did,
26 “rehabilitation of the defendant is not, by itself, an extraordinary and compelling reason . .
27 . .” U.S.S.G. § 1B1.13 cmt. n.3. Without more, Mr. Alvarez-Chavez simply fails to
28 demonstrate the existence of any extraordinary or compelling reasons that would justify

1 his release.⁵ Accordingly, his motion for compassionate release should be denied.

2 Respectfully submitted this 13th day of February, 2020.

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7 SETH T. GOERTZ
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27 ⁵ It is certainly possible that at some point in the future Mr. Alvarez-Chavez will be
28 able to demonstrate that an extraordinary and compelling reason exists—such as after he
turns 65 and if his health continues to deteriorate—but that time is not now.

CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2020, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and mailed a copy to the Defendant (pro per) at the following address:

Martel Alvarez-Chavez
FCI Edgefield
P.O. Box 725
Edgefield, SC 29824

By s/A. Clifton
U.S. Attorney's Office